

REMARKS

Claims 15-23 and 25-27 remain in the present application.

ELECTION/RESTRICTION REQUIREMENT

The Examiner has imposed a restriction requirement, and requested that Applicants elect one of three (3) identified groups of claims for prosecution in connection with the present application. The groups of claims are as follows:

- Group I** Claims drawn to a playable surface wherein air chambers take the form of recesses in the upper part of the relatively hard substrate;
- Group II** Claims drawn to a playable surface wherein air chambers take the form of recesses in the upper part of the layer of resilient and/or damping material; or
- Group III** Claims drawn to a playable surface wherein air chambers take the form of recesses in the lower part of the layer of resilient and/or damping material.

Further, if Group II is selected, one of the following subspecies is required:

- Species A** Claims drawn to the air chambers formed by profile of a mat – FIG. 3;
- Species B** Claims drawn to the air chambers formed by removing inclusion in the layer of resilient and/or damping material – FIG. 2; or
- Species C** Claims drawn to a playable surface wherein air chambers comprise intermediate spaces between relatively large granules – FIG. 4.

APPLICANTS ELECTION

Applicants respectfully elect Group III, including claims 15, 18, 20-23, 25 and 26, with traverse. Applicants reserve the right to file a divisional application for the non-elected claims during the pendency of this application.

In addition, at least claims 15, 18, 21-23, 25, and 26 are generic¹, and respectfully request **rejoinder** of non-elected claims, viz. claim 16, 17, and 19, if generic independent claim 15 is allowed. (See *MPEP 821.04*).

With regard to Applicants' traversal, it is respectfully submitted that this application is a National Stage of PCT International Application PCT/NL2003/000542, which is governed under the PCT **lack of unity** invention rules. Hence, the Restriction Requirement asserts that "[t]he species are independent and distinct because claims to the different species recite the **mutually exclusive** characteristics of such species"² (*emphasis added*). Applicants respectfully submit, however, that the Examiner is relying on an improper standard in imposing the Restriction Requirement. Specifically, the proper standard for imposing a Restriction Requirement based on a PCT application should be governed under a *single general inventive concept* (see *PCT Rule 13.1*), i.e., the same or corresponding special technical features. Accordingly, since the Examiner is at least relying on an improper standard, Applicants respectfully request reconsideration and withdraw of the Restriction Requirement.

Notwithstanding the above, Applicants submit that all claims does form a single general inventive concept. For instance, **all** of the claims are directed to a

¹ In the Office Action, the Examiner asserts that claim 15 is generic.

² See Office Action mailed August 6, 2009, page 2.

single general inventive concept because the special technical feature(s) (e.g., "permanent air chambers") and are found in claims 15-23 and 25-27.

In addition, it is respectfully submitted that the subject matter of all claims is sufficiently related that a thorough search for the subject matter of any one group would encompass a search for the subject matter of the remaining claims. Thus, Applicants respectfully submit that the search and examination of the entire application could be performed without serious burden. M.P.E.P. § 803 states:

[i]f the search and examination of an entire application can be made without serious burden, the Examiner **must** examine on the merits, even though it includes claims to distinct or independent invention. (*emphasis added*)

Thus, it is respectfully submitted that this policy should apply in the present application in order to avoid unnecessary delay and expense to Applicants' and duplicated examination by the Patent Office.

Further, the invention should be independent or distinct, and

there must be a serious burden on the Examiner if a restriction is not required. See M.P.E.P. § 803.092, 806.04 A through J, 808.01(a) and 808.02.

Moreover, Applicants respectfully submit that the Examiner ***has already considered all the claims*** in a previous Office Action mailed June 5, 2008 and thus, it is unclear how there is a *serious burden* on the Examiner to continue examining claims which have already been searched. Further, Applicants respectfully submit that the claims of the present invention appear to be part of an overlapping search area.

Accordingly, Applicants respectfully submit that the Examiner would not be unduly burdened if forced to examine Groups I-III together.

For all of the above stated reasons, reconsideration and withdrawal of the outstanding Restriction Requirement and favorable allowance of all claims in the instant application are earnestly solicited.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies to charge payment or credit any overpayment to Deposit Account No. 08-0750 for any additional fees required under 37 C.F.R. §§ 1.16 or 1.17; particularly, extension of time fees.

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Respectfully Submitted,

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